

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

UNITED STATES OF AMERICA,

Plaintiff, :

Case Nos. 2:14-cr-127, 2:15-cr-80
Civil Case Nos. 2:20-cv-5733, 2:21-cv-1120

Chief Judge Algenon L. Marbley
Magistrate Judge Michael R. Merz

- vs -

ROBERT D. LEDBETTER,

Defendant. :

DECISION AND ORDER

This *pro se* proceeding under 28 U.S.C. § 2255 is before the Court upon the filing of Defendant's "Declaration and Signature as Ordered by the Court to Cure Deficient 28 U.S.C. § 2255 Motion" ("Declaration", ECF No. 1772).

Because Ledbetter did not sign the § 2255 Motion as originally filed on November 2, 2020 (ECF No. 1681), the Magistrate Judge ordered him to sign and file the required declaration under penalty of perjury not later than April 1, 2022 (Order to Sign, ECF No. 1764). The newly-filed Declaration is Ledbetter's purported compliance.

As to time of filing, the Declaration was received by the Clerk, filed, and docketed on April 18, 2022. Ledbetter claims the benefit of the prison mailbox rule to show timely filing by claiming he submitted the Declaration to prison staff on March 28, 2022, to be mailed by certified mail

postage prepaid. The postmark also shows receipt in April (PageID 20399). Nevertheless, the Magistrate Judge will accept Ledbetter's representation that he deposited the envelope with prison staff before April 1, 2022, and accept the Declaration as bringing the original § 2255 motion in compliance with the Rules Governing § 2255 Motions. The Report and Recommendations recommending dismissal of the § 2255 proceeding for refusal to sign (ECF No. 1770) is WITHDRAWN.

As part of his Declaration, Ledbetter argues that his failure to sign the original § 2255 motion when he filed it deprived this Court of subject matter jurisdiction of the proceeding and he moves to vacate all actions and orders entered prior to receipt of his Declaration (PageID 20394-98). Ledbetter hand-numbered these pages 1-5 and may have intended that they be separately filed and docketed, but they were not. To avoid confusion in references of PageID numbers, the Court will leave these pages as presently filed. In accordance with Fed.R.Civ.P. 5(d), the Court will treat the Motion as served on the United States on April 18, 2022. The Government's memorandum in opposition, if any, shall be served and filed not later than May 9, 2022, per S. D. Ohio Civ. R. 7.2.

April 21, 2022.

s/ Michael R. Merz
United States Magistrate Judge